IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5082 of 1991

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRITSINH K GOHEL

Versus

GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD

Appearance:

1. Special Civil Application No. 5082 of 1991

MR MR ANAND for Petitioner No. 1

MR KM PATEL for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 21/10/2004

ORAL JUDGEMENT

This writ petition under Article 226 of the

Constitution of India is directed against respondent-corporation with a prayer that order at 'Annexure D', which gives seniority to the petitioner w.e.f. 21st December, 1989 is unjust, unreasonable, arbitrary, discriminatory and unconstitutional. It is further prayed that respondents may be directed to treat the petitioner at par with other employees in the similar cadre and in service of the corporation with effect from 1st December, 1964 that is the date when the petitioner initially joined the services in the Clerk Cadre through Centralised Recruitment Scheme.

2. The petitioner has stated in the petition and as argued by the learned Advocate for the petitioner that initially the petitioner joined the cadre of Clerk on 1st May, 1963 and were in a different position and subsequently allotted to the office of N.C.C. The petitioner was further promoted to the higher post of Sr.Clerk and thereafter transferred to Gujarat Civil Supply Corporation. The main contention of the petitioner is that respondent corporation is a "State" within the meaning of Article 12 of the Constitution of India and it has special functions and object under the Constitute. When the respondent corporation was created, the offer of the corporation was sent from the Government offices, particularly from the Food and Civil Supplies Department of the State of Gujarat, Revenue Department and Treasury Offices of various Collectorates. It is the contention of the petitioner that such employees were given to understand that they will be absorbed in the services of the Corporation with the benefit of the services of their erstwhile employer with all continuity. The petitioner was one of such employees and his case was recommended for absorption by the District Level Authorities and the relevant letter is produced at 'Annexure A' dated 11th November, 1986.

3. The learned Counsel for the petitioner has further submitted that the Respondent Corporation has held the recruitment and promotion Rule, 1985 and as per Rule 7, benefit of continuity of service is granted to the employees, who had come from other Government departments to the Corporation. The relevant Rule is as under:

> "Subject to the relevant provisions of Rule 7 (V) above seniority of the State Government employees absorbed int he services of the corporation shall be fixed ont he basis of their continuous service on the post in the State Government. In the same scale of post in which they are absorbed in that

corporation."

The petitioner further contended that State of Gujarat has passed resolution dated 20th February, 1986 were it was provided that all the deputationists will be given the benefit of continuity of service and learned Counsel has further contended that certain directions were given in the judgment reported in 1989 (1) GLH page 1 to immediately absorb the deputationists with the respondent-corporation. The petitioner further contended that he was discriminated, singled out and was meeted by arbitrary treatment by the respondent-corporation by not granting benefit of continuity of service and instead of absorbing the petitioner from his initial date of entry into service i.e.1/12/64, effectively the petitioner is absorbed by the order dated 2/1/1990 w.e.f. 21st December, 1989. That the said order passed by the Corporation was pursuant to the earlier approval by the State Government of petitioner's absorption in service vide order dated 13th June, 1989.

4. It is further a case of the petitioner that the petitioner was forcefully and under coercion maked to sign undertaking and, therefore, the petitioner had acquiesced to the situation prevalent at that point of time and accepted the date of absorption.

5. That when the petitioner realised that the action of the respondent-corporation was not in accordance with Rule 7 of the Recruitment and Promotion Rule of the Corporation, the petitioner made a representation dated 2nd February, 1990 and made a request for grant of continuity of service which relates back to his original entry into service in 1964. In submission, in respect of the above contentions were made by the learned Counsel of the petitioner that action of respondent-authority is arbitrary and unreasonable and particularly discriminatory in as much as the petitioner being an employee of the Government could not have been discriminated as such an un-grant of continuity of service from the date of original entry into service amounts unreasonable and discriminatory exercise of power, particularly in violation of Rule 7 of the Recruitment and Promotion Rules and, therefore, the decision of the respondent-Corporation requires to be quashed and set aside.

6. In support of his arguments, the learned Advocate has taken this Court through provisions of Rule 7 and the policy enumerated in Resolution of State Government which is produced by the petitioner at Annexure 'B' to this

petition dated 20th February, 1986. The learned Advocate for the petitioner specifically relied on the recital of State Government Resolution. In Para 11 of the said resolution which reads as under:

> "That those employees who have been sent on deputation or herein after sent to deputation, such employee, whenever is absorbed in the Corporation such an employee is to be absorbed from their original and regular date of appointment in the Government or such an employee to be absorbed by the approval of the Government and to be promoted and their seniority to be considered accordingly. This will also be applicable for governing interse seniority of such employees."

7. Therefore, the Learned Counsel for the petitioner vehemently submitted that looking to the provisions of Rule 7 of Recruitment and Promotion Rules of the Corporation and the Policy laid down in the aforesaid Government Resolution, the petitioner deserves continuity of service and absorption from the date of his original entry into service since 1964 and denial by the Corporation of such benefit is required to be set right in the exercise of power under Article 226 of the Constitution of India.

8. That the petition initially came to be admitted and Rule was made returnable thereafter. In reply to the notice of this Court the respondent-Corporation has filed affidavit-in-reply and resisted in further order that may be passed by this Court. The said reply is filed by the Manager Personnel of the Gujarat State Civil Supplies Corporation and contended before this Court that though the petitioner has claimed seniority from the date of his original entry into the service, he has not joined concerned affected persons as parties. It is further contended that the Civil Supply Corporation is a different entity under the statute and initially the Government has floated this Corporation for certain objects and reasons whereby essential commodities can be easily made available with the consumers. That the deponent has further elaborately transferred all Government employees from various departments namely Food and Civil Supplies Department, Revenue Department, Directorate of Food then Directorate of Civil Supplies (Accounts) and employees from such departments were taken on deputation. The main contention of the deponent in the reply is that Rule 7 framed by the Corporation for recruitment and promotion of the employees is not

applicable in the case of the petitioner on the ground that the petitioner is not from the Food and Civil Supply Department and, therefore, the petitioner cannot be given benefit of continuity of seniority, that the present cadre of the petitioner is from NCC and the post of the petitioner was not transferred along with the activities of the said department and the petitioner was a distinct and different entity. It was further contended that there was no obligation on the part of the Corporation to absorb the petitioner in the service of the Corporation and particularly the case of the petitioner was different from the case of the other deputationists and, therefore, he was not entitled to claim seniority on the basis of the joining the Government service. That the main substance of opposition and which was vehemently canvassed even by the Learned Counsel for the respondent Shri Patel that the petitioner had given an undertaking on or about 18th December 1989 and thereafter only the petitioner came to be absorbed in the service by order dated 2nd January, 1990. It was vehemently submitted by the learned Counsel for the respondent that since the petitioner had acquiesced to the situation and taken the order of absorption in its true spirit, since it was in accordance with the policy of the corporation and the Recruitment and Promotion Rules, it cannot be said that the petitioner was treated discriminately or in any manner in exercise of the gross arbitrary and violation of Article 14 or 16 of the Constitution of India. Mr.Patel learned Counsel for the respondents has further submitted that the petitioner had not only signed the undertaking but had addressed a letter on 3rd August, 1989 and had expressed his willingness to be absorbed in the service of the Corporation on a condition that his seniority may be recokned from the date of order of the absorption in the services of the Corporation.

Therefore, the reliance of the learned Counsel for the petitioner on Rule 7 (VII) of the Recruitment and Promotion Rules is ill-founded and submissions of arbitrary or discriminatory treatment to the petitioner deserves to be rejected.

It was further contended that the nature of relationship between the employee of the Corporation and the Corporation is of contractual in nature and, therefore, also decision of the Corporation cannot be said in any manner unjust or unreasonable or violative of Article 14 of the Constitution of India. Finally the submission of Mr.Patel is to the extend that grant of seniority to the petitioner w.e.f 1989 is in accordance with the Rules and, therefore, no disturbance is

warranted from this Court in exercise of power under Article 226 of the Constitution of India.

9. However, learned Counsel for the petitioner has also filed affidavit in rejoinder and has urged again that the petitioner is entitled to the benefit of Rule 7 of the Recruitment as well as Promotion and being in his support of his submission the learned Counsel for the petitioner has relied on two authorities namely 1989 (1) GLH (1) and AIR 2000 Supreme Court Weekly page 19 and submitted that the respondent corporation has not carried out the direction given in the judgment reported in 1989 (1) GLH in its true spirit and, therefore, also the order of corporation made in the petition requires to be set aside.

The learned Counsel has relied the authority reported in AIR 2000 Supreme Court Weekly page 19, were particularly he has read the head note 'E' which provides that in office memorandum, providing for execution of service rendered by an employee in equivalent cadre in performing department is violative and Article 14 of the constitution of India and with regard to interse dispute between the employees, Government role should be made partially implement and, therefore, in the present case also, according to the learned Advocate for the petitioner that execution of the service of the petitioner of his erstwhile service in the Collectorate and NCC office by the corporation, while absorbing the petitioner in service is unreasonable and arbitrary and requires to be set right by this Court.

That the facts of the aforementioned case simply not applicable in the present case. In the light and special circumstances of the said decision were there was a dispute about absorption of deputationists and competition of seniority between the two departments of the Central Government namely Delhi Police and Border Security Force and there was no dispute at that point of time and that the service of the police before the Supreme Court were regularised in the post of Sub Inspector and they were transferred as regularly appointed as Sub Inspector of Delhi Police Force. Therefore, on being absorbed in a equivalent cadre in the transferred post there could not be any reason why this transferred officials should not be permitted to count their services in the parent department. In the light of the above facts the aforesaid observations were made by the Supreme Court.

In the present case the facts are totally

different and the petitioner has already given undertaking to the Corporation and, therefore, being a different entity cannot be given promotion or benefit of Rule 7 of the Recruitment and Promotion Rules of the Corporation.

10. This Court do not find any substance in the arguments of learned Counsel for the petitioner in as much as the petitioner belonging to the different department of the State and he was not transferred along with his post or not carried out with his activities with the respondent corporation. Besides by expressing his willingness to be absorbed in the Corporation on condition or seniority should be recokned from the date of absorption in the service of the Corporation and having entered into a specific agreement, the petitioner cannot be allowed to back track and claim benefit of continuity of service.

That even the Government Resolution of February 1986 is with regard to the deputationist to be absorbed in the Government Corporation, who held from the Government and to grant continuity of service accordingly. That from the provision of the said circular is pertaining to the subject of absorption of employees of Civil Supply Department of the State of Gujarat in Gujarat Civil Supply Corporation and, therefore, para 11 of the Resolution is also not applicable to the petitioner.

11. In the circumstances the claim of the petitioner to grant continuity of service w.e.f. 1st December, 1964 and absorption in the respondent-corporation accordingly is not just and proper and well-founded and no legal right of the petitioner is violated as discussed above. That the decision of the respondent corporation is, therefore, cannot be said to be arbitrary or discriminatory and for grant of date of petitioner for seniority by the corporation w.e.f. December, 1989 cannot be said to be without any rational or logic in any manner infringing Article 14 of the Constitution of India and, therefore, no prayer has made out in para 10 can be granted. The petition deserves to be rejected. Rule issued by this Court stands discharged. Ad-interim relief stands vacated. No order as to costs.

(Anant S. Dave, J.)

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